BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Policies and Rules for the	)	**IB Docket No. 98-21**
Direct Broadcast Satellite Service	)	

To: The Commission

COMMENTS OF UNIVISION COMMUNICATIONS, INC.

Univision Communications Inc. ("Univision"), by its attorneys, hereby respectfully submits its comments on the Commission's Notice of Proposed Rulemaking in IB Docket No. 98-21 (the "NPRM"). For the reasons set forth below, Univision urges the Commission to adopt regulations prohibiting common ownership and control of direct-to-home ("DTH") satellite services (whether in the fixed satellite ("FSS") or direct broadcast satellite ("DBS") services) and competing, non-satellite, multi-channel video programming distribution ("MPVD") services. In particular, Univision urges the Commission not to permit major MPVD service providers, such as vertically-integrated cable multiple system operators ("MSOs"), to deprive the marketplace of the competitive opportunity offered by DTH services.

1. Univision is the leading Spanish-language television broadcaster in the United States. It operates the Univision Network, the most popular Spanish-language broadcast network in the United States, which has 41 television station affiliates, 20 of which are full-power television

stations. Univision controls Univision Television Group, Inc., which owns and operates 13 full-power and eight low-power television stations, including full-power stations in 12 of the top 15 Hispanic markets. In addition, Univision owns and operates Galavision, the most-watched Spanish-language cable network in the country. The Univision Network programming is also provided to viewers through 832 cable system affiliates, and it is made available to the public for home reception by FSS subscribers, as is the Galavision program service.

2. A great number of Hispanic viewers subscribe to MPVD services. They include wired and wireless cable subscribers and owners of C-Band, Ku Band, and DBS backyard dishes. In areas outside the primary signals of Univision television station affiliates, these MPVD services are often the only source of Spanish-language television programming available. Given that over seventy percent of Hispanics prefer to speak Spanish in their homes, the importance of making Spanish-language programming available to the millions of Hispanics in the United States is manifest.[1/] Univision's desire to serve these Spanish-speaking viewers drives Univision's interest in ensuring that there is a competitive environment governing video access to American homes.

3. It is in the public interest for the Commission to ensure a robust and vibrant MPVD marketplace. This will allow program suppliers, such as Univision, which are not economically

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1/ Viewers who speak only Spanish have little interest in English-language programming. Moreover, studies conducted for Univision show a significant number of bilingual Hispanics prefer to watch Spanish-language television. Many Hispanics desire to preserve their unique heritage, and the common language upon which it is based. By building and maintaining their Spanish language skills, Hispanics aspire to maintain their cultural identity. Thus, it is important to Hispanic families that they have Spanish-language programming readily available to the entire family in order to access news and information relevant to the Hispanic community.

integrated with one or more MPVDs, to compete on a level playing field with all other programming providers. Access to viewers should be determined by program popularity and quality rather than the financial connections of the programmer. Equally important, a competitive MPVD marketplace is required to ensure that viewers obtain the best selection of programming options at the lowest feasible cost. Without vigorous competition, there will be no impetus for MPVD providers to add channels, make technological improvements, or to limit charges for subscribers. Rate controls and other forms of government supervision are no substitute for a vibrant, competitive marketplace.

4. Wired cable television now serves as the program distribution source for a majority of Americans. Other technologies, such as wireless cable, have not proven to be an effective competitor other than in a few isolated cases. Because the MPVD marketplace is not truly competitive, Congress has adopted, and the Commission has implemented, a broad ranging scheme of controls over rate increases in the cable industry. However, those controls have not proved effective, because they permit cable rate increases when program channels are added. These rate increases have created wide public indignation over continuing price escalation in the cable industry, indignation that has gained attention in Congress and at the Commission.

5. DTH satellite service promises to offer the first truly significant competition to the effective monopoly held by many cable operators over access to a majority of television homes. Through compression technology, DTH offers the possibility, now and in the future, of greater programming choices than are currently available to most cable subscribers. In addition, DTH service is ubiquitous, and the incremental cost of adding DTH subscribers is quite small in

contrast to the cost of providing or upgrading cable service. Thus, it offers the prospect of lower costs to consumers, and should constrain cable rate increases.

6. Unfortunately, perhaps in recognition of this source of competition, some of the largest players in the MPVD marketplace have sought to acquire these potentially competitive services – effectively becoming both vertically and horizontally integrated – in order to maintain their hegemony as gatekeepers of programming access to a majority of the public. First, many cable MSOs have acquired interests in program service providers. For example, TCI affiliate Liberty Media "has ownership interests in more than 90 programming services"[2] – from Encore to QVC, from Fox Sports to Discovery. This so-called "vertical integration" raises serious public interest questions. The most obvious of these is the financial incentive MPVDs have in carrying "captive" programming services in which they have an interest, and depriving their subscribers of access to programming in which their MPVDs do not have an ownership interest. Univision supports strengthening regulations designed to prevent DTH system operators from discriminating among programming services on the basis of whether they are financially related to the operator.

7. Horizontal integration occurs when MPVDs try to obtain interests in more than one distribution means serving the same area. PRIMESTAR, Inc. ("Primestar") is an example of this trend. Primestar already controls the PRIMESTAR DTH-FSS system which uses GE Americom's GE-2 satellite to reach a self-proclaimed two million subscribers, placing it among

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[2] What's TCI?, http://www.TCI.com/Whats_TCI/TCI0.html.

the top eight MPVDs in America.[3] As the NPRM notes, Primestar now is seeking to acquire control of Tempo Satellite, Inc., from TCI Satellite Entertainment, Inc. ("TCI-Sat"), its largest shareholder, and to acquire the ASkyB DBS system from a joint venture of News Corp and MCI. Eleven of the 22 Tempo DBS channels and all 26 of the ASkyB DBS channels are located within the key full-CONUS portion of the geostationary arc.

8. Primestar is itself owned and controlled by the cable television industry. According to a News Release issued by Primestar on February 12, 1998, its owners are:

TCI-Sat	35%
Time Warner / Newhouse	31%
Comcast	10%
MediaOne (US West Media Group)	9%
Cox	9%
GE American Communications	5%

Thus, 94% of Primestar is owned by five major MSOs. Because Primestar offers service throughout the continental United States, it is self-evident that wherever its MSO shareholders own a cable system, those shareholders will have interests in two preeminent MPVD sources.

9. In such a situation, it cannot be expected that there will be real competition between the two. Indeed, there is every expectation that the two "competitors" will be operated in tandem to maximize revenues from both MPVDs. Univision submits that this form of concentration is contrary to the public interest and should be prohibited. TCI, Time-Warner, Comcast,

[3] Primestar Passes 2 Million Customer Mark, http://www.primestar.com /ezget/news/articles/corp/2mill.htm.

MediaOne, and Cox should decide whether they want to own cable systems or DTH. They should not be permitted to own both.

10. What is even more troubling to Univision than either the problems of vertical integration by cable, or horizontal integration by DTH and Cable, is the combination, seen in entities like Primestar, of both horizontal and vertical integration. TCI-Sat, which holds the largest interest in Primestar, is effectively under common control with TCI[4/]. As discussed above, either directly or through another TCI affiliate, Liberty Media, TCI already has ownership interests in over 90 programmers. Univision believes that such a situation offers the worst of all worlds. There is every incentive to maintain high prices at both the cable and satellite MPVDs, so as to ensure that the services do not cannibalize each other, and to maximize total revenues. In addition, there is every incentive to carry, both on cable and DTH, signals in which the MPVD or its affiliates have a financial interest. Thus, for the consumer, there are high prices and poor programming alternatives. Both cable and satellite systems will carry virtually identical

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[4/] TCI-Sat was formerly indirectly owned by Tele-Communications, Inc. ("TCI"), the largest MSO in the United States. On December 4, 1996, the stock of TCI-Sat was distributed to the shareholders of TCI, and TCI-Sat describes itself as operating independently of TCI. However, its Chairman is John C. Malone, CEO of TCI; its Chief Executive Officer and director, Gary S. Howard, is also President of two TCI subsidiaries (United Video Satellite Group, Inc., and TCI Ventures Group LLC); and two of the remaining four officers are employees of TCI, including Leo J. Hinderey, Jr., President and COO of TCI. Moreover, TCI has provided numerous legal, corporate, finance, management, and telecommunications services to TCI-Sat pursuant to a Transition Services Agreement. Most importantly, TCI has agreed to provide TCI-Sat with certain rights held by TCI to programming services that it may now own or obtain in the future. See TCI-Sat Form 10-K, filed with the Securities and Exchange Commission on March 30, 1998, at pp. II-29, III-1, and III-17.

programming, for similar rates. Non-integrated program suppliers will face ever greater difficulty in obtaining access to viewers, no matter how high the quality of their programming.

11. In the NPRM, the Commission asks whether a cable/DTH "cross-ownership" prohibition should be adopted. Univision does not believe this goes far enough. Instead, Univision urges that the Commission prohibit the common ownership and control of major MPVD systems. Thus, an entity could have an attributable interest in one, and only one, MPVD system serving the same geographic area.[5/] In the context of the present proceeding, an entity could have an attributable interest in one and only one DTH system. Or it could have an interest in a cable MSO. But it could not have an attributable interest in two DTH systems, or a DTH system and a cable MSO. This will ensure that DTH is a true competitor to cable, delivering all the public interest benefits inherent in a free and vibrant competitive video marketplace.

12. By prohibiting common interests in more than one MPVD, the Commission will ensure that the public will receive the best programming at the best rates. First, the genuine competition sparked by such a prohibition will constrain pricing by both cable and satellite operators. Second, there will be a greater likelihood of technological advances, as each MPVD seeks to obtain an advantage by providing more and better services. Finally, the public will get

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[5/] For the purposes of this rule, Univision believes that the Commission should keep its test for attribution easy to understand and implement. All general partners are attributable. Limited partners must show complete non-involvement in partnership matters, and an absence of any business or financial relationship with the partnership business, in order to be non-attributable. Shareholders holding a 5% or greater voting stock interest are attributable (unless they are passive insurance companies, bank trust departments, or qualified investment companies, in which case a 10% threshold would apply). Officers and directors are attributable. Entities having representatives on a corporate board, or having other indicia of *de facto* control or influence, would also be attributable.

the opportunity to receive programming chosen on merit and viewer interest, rather than on economic ties to the system operator. These vital public interests call for Commission action now.

Conclusion

For all the above reasons, Univision Communications Inc. proposes that the Commission adopt regulations prohibiting common ownership of MPVDs serving the same geographic area.

Respectfully submitted,

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